

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-668

EVLYNYNE KIRKENDOLPH
APPELLANT

V.

DF&A REVENUE SERVICES
DIVISION DEATH AND
PERMANENT TOTAL DISABILITY
FUND
APPELLEES

Opinion Delivered FEBRUARY 18, 2009

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[NO. F503749]

REBRIEFING ORDERED

RITA W. GRUBER, Judge

This workers' compensation case involves Evlynne Kirkendolph's attempt to appeal to the Workers' Compensation Commission the denial of her claim for permanent disability benefits in connection with compensable carpal-tunnel syndrome. In an opinion of April 24, 2008, the Commission denied her motion to reopen and dismissed her appeal because it was not filed within thirty days of receipt of the administrative law judge's order denying the claim.¹ Kirkendolph contends on appeal that the Commission 1) erred in denying her an extension of time to file her appeal, 2) abused its discretion in failing to set aside the award because of a miscarriage of justice, and 3) abused its discretion in denying her motion to

¹Under Ark. Code Ann. § 11-9-711(a)(1) (Supp. 2007), an administrative law judge's order or award "shall become final unless a party to the dispute shall, within thirty (30) days from the receipt by him or her of the order or award," petition the Commission for review.

reopen her claim for new evidence. We remand for rebriefing.

Kirkendolph appeared with counsel at her hearing before the law judge, whose decision denying the claim was entered on December 21, 2007. In a pro se filing with the Workers' Compensation Commission on February 21, 2008, Kirkendolph appealed the December 21, 2007 decision and requested "enough time to hire an attorney because of certain circumstances he is know [sic] longer practicing law." On April 1, 2008, through new counsel, Kirkendolph filed a motion to reopen the case for the purpose of submitting additional evidence. The motion referred to a miscarriage of justice and stated that the additional evidence could have a significant impact on her case.

Central to the first two points on appeal are Kirkendolph's assertions that her first attorney became suspended from the practice of law after her hearing, failed to give required notice of his suspension, and was notified "to stop the practice of law immediately." She further asserts that the Commission's usual practice is to mail a copy of the law judge's decision to the claimant herself and that the Commission failed to perform its duty of mailing notice to her "as stated by the administrative law judge."

Kirkendolph's brief does not comply with Rule 4-2 of the Rules of the Arkansas Supreme Court. For example, her argument refers to the law judge's oral comments to her at page 108 of the record, but her abstract ends with page 107 and does not include those comments. We remind counsel that the appellant's abstract should include "such material parts of . . . colloquies between the court and counsel and other parties as are necessary to an understanding of all questions presented to the Court for decision." Ark. Sup. Ct. R.

4-2(a)(5). We also remind counsel of the requirement of subsection (a)(7) that “[r]eference in the argument portion of the parties’ briefs to material found in the abstract and Addendum shall be followed by a reference to the page number of the abstract or Addendum at which such material may be found.” The argument portion under Kirkendolph’s first two points has only one page reference to the addendum and no page references to the abstract. Furthermore, Kirkendolph refers in her argument to an order of the Arkansas Supreme Court suspending the privileges of attorney Bill R. Holloway and to the “normal practice of the Commission” of having a party sign for receipt of a law judge’s opinion; nothing in Kirkendolph’s addendum, however, attests to the existence of such documents or exhibits. Subsection (a)(8) of Rule 4-2 requires that the addendum contain all “relevant pleadings, documents, or exhibits essential to the understanding of the case.”

The examples we have noted are not to be taken as an exhaustive list. We direct counsel to cure the deficient abstract by filing a substituted abstract, addendum, and brief within fifteen days from the date of the entry of this order. *See* Rule 4-2(b)(3).

Rebriefing ordered.

PITTMAN and BAKER, JJ., agree.